

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

EARL DAVID DRAKE,

Plaintiff,

v.

CAMPBELL, et al.,

Defendants.

Case No. 1:24-cv-0651 JLT BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS; DISMISSING THE
ACTION WITH PREJUDICE, FOR FAILURE
TO STATE A CLAIM, FAILURE TO OBEY A
COURT ORDER, AND FAILURE TO
PROSECUTE; AND DIRECTING THE
CLERK OF COURT TO CLOSE THE CASE

(Doc. 15)

Earl David Drake seeks to hold the defendants liable for violations of his civil rights while incarcerated at Corcoran State Prison. (*See generally* Doc. 10.) The magistrate judge screened Plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A(a) and found he failed to state a cognizable claim. (Doc. 11 at 4-8.) The Court granted Plaintiff one final opportunity to file an amended complaint that cured the deficiencies identified. (*Id.* at 8.) The Court warned Plaintiff that failure to comply with the order would result in a recommendation for dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (*Id.* at 9.) Despite receiving an extension of time to file his amended complaint, and a second warning that failure to comply so would result in dismissal (Doc. 13), Plaintiff failed to do so.

After Plaintiff did not file any second amended complaint, the magistrate judge issued Findings and Recommendations, reiterating the findings in the Screening Order. (Doc. 15 at 2-9.) In addition, the magistrate judge found Plaintiff failed to prosecute the action and failed to obey

1 the Court’s order. (*Id.* at 9.) The magistrate judge found terminating sanctions are appropriate
2 after considering the factors identified by the Ninth Circuit in *Henderson v. Duncan*, 779 F.2d
3 1421, 1423 (9th Cir. 1986). (*Id.* at 9-10.) Therefore, the magistrate judge recommended
4 dismissal “with prejudice, for failure to state a claim pursuant to 28 U.S.C. § 1915A, for failure to
5 obey court orders, and for Plaintiff’s failure to prosecute this action.” (*Id.* at 10.)

6 Plaintiff filed objections to the Findings and Recommendations, indicating that he had
7 been busy researching his claims and determined that “he cannot do so without counsel.” (Doc.
8 10 at 1.) Plaintiff indicated he was “seeking counsel” and requested that if the Court dismisses
9 the action that the dismissal be “without prejudice so as t[o] appeal.” (*Id.*)

10 Notably, Plaintiff does not dispute the finding that he failed to state a cognizable claim.
11 In addition, Plaintiff does not dispute the determination that he failed to comply with the Court’s
12 order regarding the filing of an amended complaint. Plaintiff was aware that he could request an
13 extension of time—such as the Court granted previously in this action—yet Plaintiff did not seek
14 a further extension of time or take any other action to timely prosecute the action and comply
15 with the Court’s orders. Although Plaintiff now indicates he was seeking counsel, the Court
16 cannot hold an action in abeyance indefinitely for him to find representation. Finally, to the
17 extent that Plaintiff is concerned about the ability to file an appeal, he is informed that dismissal
18 with prejudice does not preclude the filing of any appeal.

19 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of the case.
20 Having carefully reviewed the entire matter, including Plaintiff’s objections, the Court concludes
21 the Findings and Recommendations are supported by the record and proper analysis. Thus, the
22 Court **ORDERS**:

- 23 1. The Findings and Recommendations issued on April 28, 2025 (Doc. 15) are
24 **ADOPTED** in full.
- 25 2. This action is **DISMISSED** with prejudice, for failure to state a claim, failure to
26 obey a court order, and failure to prosecute.

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1 3. The Clerk of Court is directed to close this case.

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3 IT IS SO ORDERED.

4 Dated: **August 10, 2025**


UNITED STATES DISTRICT JUDGE